

SENATE BILL 1042

E2
SB 159/06 – JPR

0lr3442

By: **Senators Brochin and Stone**

Introduced and read first time: February 26, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Evidence – Separate Act of Sexual Misconduct Involving a Minor**
3 **– Admissibility**

4 FOR the purpose of authorizing a court to admit evidence of a defendant's commission
5 of a certain separate act of sexual misconduct involving a minor in a prosecution
6 for certain sexual offenses involving a minor under certain circumstances;
7 requiring the State's Attorney to disclose to the defendant the State's intent to
8 offer the evidence within a certain time period before the trial unless the court
9 allows disclosure at a later time for good cause shown; specifying the content of
10 the disclosure to the defendant; prohibiting certain evidence from being referred
11 to in a statement to the jury or introduced at trial unless the court first holds a
12 closed hearing and determines that the evidence is admissible; requiring the
13 court to enter an order stating which evidence may be introduced under certain
14 circumstances; authorizing the court to reconsider a ruling excluding evidence
15 and hold an additional closed hearing if new information is discovered during
16 the trial that may make the evidence admissible; defining certain terms;
17 providing for the construction and application of this Act; and generally relating
18 to the admissibility of evidence in criminal proceedings.

19 BY repealing and reenacting, without amendments,
20 Article – Criminal Law
21 Section 1–101(g)
22 Annotated Code of Maryland
23 (2002 Volume and 2009 Supplement)

24 BY adding to
25 Article – Courts and Judicial Proceedings
26 Section 10–916.1
27 Annotated Code of Maryland
28 (2002 Replacement Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Criminal Law**

4 1–101.

5 (g) “Minor” means an individual under the age of 18 years.

6 **Article – Courts and Judicial Proceedings**

7 **10–916.1.**

8 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
9 MEANINGS INDICATED.

10 (2) “ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR” MEANS:

11 (I) A VIOLATION OF § 3–602 OF THE CRIMINAL LAW
12 ARTICLE;

13 (II) A VIOLATION OF FORMER ARTICLE 27, § 35C OF THE
14 CODE OCCURRING BEFORE OCTOBER 1, 2002, THAT INVOLVED SEXUAL ABUSE
15 OF A MINOR;

16 (III) A VIOLATION OF TITLE 3, SUBTITLE 3 OF THE
17 CRIMINAL LAW ARTICLE INVOLVING A VICTIM WHO IS A MINOR; OR

18 (IV) A VIOLATION OF FEDERAL LAW OR THE LAW OF
19 ANOTHER STATE THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ANY
20 OF THE CRIMES SPECIFIED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.

21 (3) “MINOR” HAS THE MEANING STATED IN § 1–101 OF THE
22 CRIMINAL LAW ARTICLE.

23 (B) SUBJECT TO SUBSECTION (D) OF THIS SECTION, IN A PROSECUTION
24 FOR A VIOLATION OF § 3–602 OF THE CRIMINAL LAW ARTICLE OR A VIOLATION
25 OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE INVOLVING A VICTIM
26 WHO IS A MINOR, EVIDENCE OF THE DEFENDANT’S COMMISSION OF A SEPARATE
27 ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR IS ADMISSIBLE IF THE
28 COURT:

29 (1) (I) IN A BENCH TRIAL, FINDS BY CLEAR AND CONVINCING
30 EVIDENCE THAT THE DEFENDANT COMMITTED THE SEPARATE ACT; OR

1 **(II) IN A JURY TRIAL, FINDS THAT A REASONABLE JURY**
2 **COULD FIND BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT**
3 **COMMITTED THE SEPARATE ACT; AND**

4 **(2) FINDS THAT THE PROBATIVE VALUE OF THE EVIDENCE IS NOT**
5 **SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE AGAINST**
6 **THE DEFENDANT.**

7 **(C) (1) IF THE STATE INTENDS TO OFFER EVIDENCE UNDER THIS**
8 **SECTION, THE STATE'S ATTORNEY SHALL DISCLOSE THE EVIDENCE TO THE**
9 **DEFENDANT AT LEAST 15 DAYS BEFORE THE SCHEDULED DATE OF TRIAL,**
10 **UNLESS THE COURT ALLOWS DISCLOSURE AT A LATER TIME FOR GOOD CAUSE**
11 **SHOWN.**

12 **(2) THE DISCLOSURE SHALL INCLUDE STATEMENTS OF**
13 **WITNESSES OR A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT THE**
14 **STATE EXPECTS TO OFFER.**

15 **(D) (1) EVIDENCE DESCRIBED IN SUBSECTION (B) OF THIS SECTION**
16 **MAY NOT BE REFERRED TO IN A STATEMENT TO A JURY OR INTRODUCED IN A**
17 **TRIAL UNLESS THE COURT FIRST HOLDS A CLOSED HEARING AND DETERMINES**
18 **THAT THE EVIDENCE IS ADMISSIBLE.**

19 **(2) IF THE COURT DETERMINES THAT ALL OR SOME OF THE**
20 **EVIDENCE IS ADMISSIBLE, THE COURT SHALL ENTER AN ORDER STATING WHICH**
21 **EVIDENCE MAY BE INTRODUCED.**

22 **(3) THE COURT MAY RECONSIDER A RULING EXCLUDING THE**
23 **EVIDENCE AND HOLD AN ADDITIONAL CLOSED HEARING IF NEW INFORMATION**
24 **IS DISCOVERED DURING THE COURSE OF THE TRIAL THAT MAY MAKE THE**
25 **EVIDENCE ADMISSIBLE.**

26 **(E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE ADMISSION**
27 **OR CONSIDERATION OF EVIDENCE UNDER ANY OTHER RULE OR PROVISION OF**
28 **LAW.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
30 construed to apply only prospectively and may not be applied or interpreted to have
31 any effect on or application to any prosecution commenced before the effective date of
32 this Act.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2010.